

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 207 of 1988

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

MAGANBHAI BHANJIBHAI KAMANIYA

Versus

GULABRAY SHANTILAL KATARIYA

Appearance:

1. Civil Revision Application No. 207 of 1988

MS KJ BRAHMBHATT for the Petitioner
MR SURESH M SHAH for the Respondent

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 26/04/2005

ORAL JUDGEMENT

Feeling aggrieved by the judgment and order dated

25th April, 1986 passed by the learned Assistant Judge, Jamnagar in Regular Civil Appeal No.35/1985, the respondent, plaintiff in Regular Civil Suit No.203/1979 has preferred the present Revision Application under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as "the Rent Act").

The plaintiff is the owner of the suit premises being a residential flat situated at Jamnagar. The plaintiff instituted the above referred Regular Civil Suit No.203/1979 in the Court of Civil Judge (J.D.), Jamnagar for recovery of possession of the suit premises and the arrears of rent due from the defendant, the tenant. The plaintiff has been residing outside India. The suit premises was being managed by his brother and the constituted attorney one Rameshchandra Bhanjibhai. According to the plaintiff the suit premises was leased to the defendant for a monthly rent of Rs.250=00; that the defendant paid the rent upto 30th June, 1977; that the defendant was in arrears of rent since 1st July, 1977. The plaintiff gave notice of demand dated 9th October, 1978 (Exh.41) as envisaged by Section 12(2) of the Rent Act. The said notice was replied by the defendant on 13th October, 1978 (Exh.27). The defendant denied that he was the tenant in the suit premises or that he had ever paid the rent for the suit premises. The plaintiff issued another notice of demand dated 22nd February, 1979 (Exh.31). The said notice was also replied by the defendant (Exh.32).

The suit was contested by the defendant by written statement (Exh.19). The defendant reiterated the denial made in the reply to the suit notice.

The learned Civil Judge, by his judgment and order dated 31st January, 1985, held that the defendant was the tenant in the suit premises; that he was residing in the suit premises with his mistress one Renukaben and two children; and that he was in arrears of rent as alleged. The learned Civil Judge, therefore, passed decree for eviction and for recovery of the arrears of rent due. Feeling aggrieved, the defendant preferred Regular Civil Appeal No.35/1985 in the Court of District Judge, Jamnagar. The appeal was heard and dismissed by the Assistant Judge, Jamnagar by impugned judgment dated 25th April, 1986. Therefore, the present Revision Application.

Ms.Brahmbhatt has submitted that the plaintiff is entitled to decree for eviction not only on the ground that the defendant is the tenant in default but also on

the ground of disclaimer. She has submitted that it has been proved that the defendant was residing in the suit premises with one Renukaben and had two children through the said relationship. She has submitted that the defendant had admitted that he had never paid the rent for the suit premises. The defendant denied the title of the plaintiff in reply to the suit notice (Exh.27) and also in the written statement (Exh.19). The plaintiff is, therefore, entitled to decree for eviction. She has submitted that the lower appellate Court has manifestly erred in holding that the plaintiff, being a person of foreign nationality, in absence of the authorisation granted by the Reserve Bank of India, the plaintiff could not have purchased property in India and, therefore, he cannot be the owner of the suit premises. She has also submitted that the lower appellate Court has erred in holding that the defendant was not the tenant in the suit premises.

Irrespective of the reasoning of the lower appellate Court, I am of the opinion that the plaintiff has failed to establish the landlord-tenant relationship between himself and the defendant. Except the oral evidence given by the constituted attorney of the plaintiff, no documentary or contemporary evidence of tenancy has been produced on the record of the matter. There has not been a rent note or a possession receipt to prove the tenancy. Though the plaintiff has stated that the rent upto 30th June, 1977 was paid by the defendant, no copy or counter-foil of the rent receipt issued by the plaintiff has been produced. The deponent did not say who paid the rent or in what manner the rent was paid. Though it is admitted that one Renukaben has been residing in the suit premises, she has not been impleaded as party defendant nor was she examined as a witness. Thus, except the bare statement made by the constituted attorney of the plaintiff there is not an iota of evidence to suggest that the defendant was the tenant in the suit premises. In absence of the evidence of tenancy or of the landlord and tenant relationship the decree for eviction cannot be passed.

In view of the above discussion, the Revision Application is dismissed with cost. Rule is discharged.

(Ms. R.M.Doshit, J.)
/sakka